

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Fallon
Serial No. : 09/990,909
Filed : November 17, 2001
Title : METHODS FOR DIAGNOSING PERVASIVE DEVELOPMENT DISORDERS,
DYSAUTONOMIA AND OTHER NEUROLOGICAL CONDITIONS

Art Unit : 1648
Examiner : Zachariah Lucas

MAIL STOP PETITIONS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Petition to Revive Unintentionally Abandoned Application Under 37 CFR § 1.137(b)

In response to the Notice of Abandonment mailed on January 4, 2006, with regard to the subject application:

I, Teresa A. Lavoie, Ph.D., declare and state the following:

1. I am and have been a registered patent attorney for the past six years, and previously to that, I was a registered patent agent for five years. I am an attorney at the law firm of Fish & Richardson PC, and have been an agent/law clerk or attorney with the firm since 2001.
2. I represent Curemark LLC ("Curemark"), which is the assignee of the above-referenced application.
3. The declaration of Joan Fallon, the sole inventor on the above-referenced application and the CEO of Curemark, is concurrently submitted herewith. ("Fallon Declaration," **Exhibit A.**)
4. Based on the Public PAIR file history of the above-referenced application, Ms. Fallon filed the same with the U.S. Patent and Trademark Office ("PTO") on November 16, 2001 using the law firm of F. Chau & Associates LLP ("prior counsel").

CERTIFICATE OF MAILING BY EFS-WEB FILING

I hereby certify that this paper was filed with the Patent and Trademark Office using the EFS-WEB system on this date: November 13, 2009

5. Based on the Public PAIR file history, a Final Rejection was issued on July 27, 2004. A Notice of Appeal was filed on January 27, 2005, setting a final deadline for response of August 27, 2005.

6. Based on the Public PAIR file history, on July 28, 2005, prior counsel filed a Request to Withdraw as Attorney or Agent. This July 28, 2005 date was approximately one (1) month prior to the final deadline for response of August 27, 2005.

7. Based on the Public PAIR file history, on August 24, 2005, three days before the final deadline for response, Ms. Fallon filed a Request to Withdraw Power of Attorney and New Power of Attorney to transfer responsibility for the above-referenced application to herself.

8. Based on the public PAIR file history, there is no acknowledgement of prior counsel's request to withdraw and no acknowledgment of Ms. Fallon's request to appoint herself as the attorney of record. Moreover, prior counsel remains identified as the attorney of record on PAIR.

9. Based on the Public PAIR file history, a Notice of Abandonment dated January 4, 2006, was issued by the PTO addressed to prior counsel.

10. Based on the Public PAIR file history, the Notice of Abandonment was returned undelivered to the PTO on January 12, 2006.

11. Ms. Fallon was not informed by prior counsel of the final deadline to respond of August 27, 2005. (Fallon Declaration at paragraphs 8 and 10.) Ms. Fallon never received the physical file or any correspondence from prior counsel after prior counsel attempted to withdraw as attorney of record. (Fallon Declaration at paragraph 9.) Ms. Fallon was not informed that the application would go abandoned if the Office Action was not responded to by the final response deadline of August 27, 2005. (Fallon Declaration at paragraph 10.) Ms. Fallon never received the Notice of Abandonment. (Fallon Declaration at paragraph 14.) Ms. Fallon did not intend for this application to go abandoned or instruct her prior counsel to let it go abandoned. (Fallon Declaration at paragraphs 16 and 17.)

11. The entire delay in filing the required reply from the due date for the reply until the filing of a grantable Petition pursuant to 37 CFR § 1.137(b) was unintentional.

12. Enclosed herewith are the following:

i) An Amendment/Request for Continued Examination (RCE) Submission, which is responsive to the Final Office Action dated July 27, 2004;

- ii) An RCE under 37 CFR § 1.114;
- iii) An RCE fee of \$405, and Excess Claims fee of \$468;
- iv) A Petition for Extension of Time (5 months) to extend the time period for response from January 27, 2005 to August 27, 2005;
- v) A 5-month Extension fee of \$1,175;
- vi) A Declaration of Ms. Fallon in support of the Petition under 37 CFR § 1.137(b) (**Exhibit A**);
- vii) A Revocation and New Power of Attorney, appointing Power to present counsel; and
- viii) The petition fee as set forth in § 1.17(m) of \$810 for the Petition Pursuant to 37 CFR § 1.137(b).

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like are so made punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Respectfully submitted,

Date: November 13, 2009

/Teresa A. Lavoie/
Teresa A. Lavoie, Ph.D.
Reg. No. 42,782

Fish & Richardson P.C.
3200 RBC Plaza
60 South Sixth Street
Minneapolis, Minnesota 55402
Telephone: (612) 335-5070
Facsimile: (877) 769-7945